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REMARKS

Claims 38, 42-44, 50, 54-55, 60, and 64-65 are amended, and claims 67-69 are added. Claims 38-69 are pending, of which claims 38, 46 and 56 are independent claims.

In the Office Action, claims 38-45, 50-55, 60-65 are rejected under 35 U.S.C. § 112 for reciting "the reply signal" without proper antecedent basis. This rejection is believed to be overcome by the amendment to the claims.

In the Office Action, claims 34-66 are rejected on the grounds of non-statutory double patenting over US 6,628,610. A terminal disclaimer is submitted herewith to overcome this rejection.

In the Office Action, it is indicated that claims 38-45, 50-55 and 60-66 would be allowable if rewritten in independent form. This action has not been taken herein because, as explained below, the broader claims from which these claims depend are also seen to be allowable. Applicant reserves the right to amend these claims into independent form upon receiving a response to the request for reconsideration of the patentability of the broader claims herein.

In the Office Action, claims 34-37, 46-49 and 56-59 are rejected under 35 U.S.C. § 102(e) as being anticipated by Waclawsky, US 6,449,255 (hereinafter "Waclawsky '255"). This rejection is respectfully traversed.

Claim 1 recites a method in a data communications device that includes:
planning a scheme change to change the initial policy scheme to a new policy scheme based on transfer conditions within the data communications device existing while transferring the packets of the particular flow based on the initial policy scheme; and

providing a change signal to a source of the particular packet flow,
the change signal indicating that the data communications device has
planned the scheme change (emphasis added).

Waclawsky '255 is seen to teach a technique in a data communications device for managing packets using a real-time feedback signal. The feedback signal 38 is generated by a traffic monitor 26 and provided to other functional elements of the data communications device 10 including an input scheduler 16, a reorder manager 18 and a discard manager 20. The feedback signal 38 indicates transmission information for an initial or previous set of packets. As shown in Figure 2, the traffic monitor 26 includes a pattern recognizer 42, a controller 44 and counters 46-i for corresponding patterns i that identify QOS classes. Thus, the real-time feedback signal 38 indicates a count of the packets of various QOS classes that are observed in the traffic from the output scheduler 24. This information is provided to respective traffic analyzers 32 of the input scheduler 16, reorder manager 18 and discard manager 20, which each make corresponding adjustments in their operation based on the observed pattern of QOS classes in the traffic.

Thus in Waclawsky '255, the feedback signal 38 merely provides information about observed traffic. It does not indicate that any scheme change has been planned. The input scheduler 16, reorder manager 18 and discard manager 20, which are seen to be the only elements capable of anything that could accurately be called "planning a scheme change", do not generate the feedback signal 38, and indeed are not seen to generate any signal that is provided to any source of the traffic indicating that a scheme change is planned. They merely alter their operation and do not signal such altering of the operation to a source of the packets.

The Office Action appears to assert that the claim element of planning a scheme change reads on the operation of the traffic monitor providing a real time feedback signal, but this is incorrect. The traffic monitor merely monitors traffic

and provides information to the input scheduler 16, reorder manager 18 and discard manager 20. The feedback signal from the traffic monitor does not indicate that a scheme change is planned, it indicates only that certain patterns of traffic have been observed.

Based on the above, it is respectfully submitted that claim 1 is not anticipated by Waclawsky '255, because this reference does not teach all the elements thereof. Specifically, it does not teach providing a change signal to a source of the particular packet flow, the change signal indicating that the data communications device has planned the scheme change. Waclawsky '255 generates a feedback signal providing information about observed traffic patterns. Although this information is used by the input scheduler 16, reorder manager 18 and discard manager 20 to alter their respective operations, the feedback signal itself does not indicate that any of these elements has planned a scheme change. Thus Waclawsky '255 fails to teach at least this element of claim 1, and therefore cannot anticipate claim 1 under 35 U.S.C. § 102(e).

Because the remaining claims incorporate, either directly or indirectly, features like those discussed above with respect to claim 1, the remaining claims are also seen to be novel under 35 U.S.C. § 102(e) in view of Waclawsky '255.

The Examiner is respectfully reminded that Waclawsky '255 is not available as a reference under 35 U.S.C. § 103 due to the exclusion effect of 35 U.S.C. § 103(c). The Waclawsky '255 reference and the instant application were both subject to assignment to Cisco Technology at the time of the invention. Documentary evidence of this common assignment can be provided if necessary.

New Claims

Claims 67-69 are added. These claims recite that the change signal is in the form of a change signal packet provided from one node to another in a network. These claims are supported by the application as filed, for example Figures 1, 2 and 4 and associated text. No new matter has been added. These

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claims are seen to be novel in view of Waclawsky '255 and the other art of record.

Conclusion

In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicant's Representative at the number below.

Applicants hereby petition for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3661.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-2900, in Westborough, Massachusetts.

Respectfully submitted,

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